

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOYCE C. ROGERS and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Biloxi, MS

*Docket No. 99-1705; Submitted on the Record;
Issued October 3, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
VALERIE D. EVANS-HARRELL

The issue is whether appellant has any disability after January 11, 1992 causally related to her September 7, 1984 employment injury.

The case has been on appeal twice previously.¹ In a December 4, 1986 decision, the Board found that the Office of Workers' Compensation Programs had not met its burden of proof in terminating appellant's compensation for chronic lumbar strain due to her September 7, 1984 employment injury. In a July 22, 1998 decision, the Board found that the Office met its burden of proof in terminating appellant's compensation effective January 11, 1992. The Board noted that Dr. Richard Buckley, a neurosurgeon and appellant's treating physician, had stated in a June 14, 1991 report that there was no objective evidence why appellant could not resume normal working activities. Dr. J.F. McGowin, a Board-certified orthopedic surgeon, stated that appellant was capable of working 8 hours a day with lifting restrictions of 10 to 20 pounds. In a January 12, 1993 report, Dr. Buckley diagnosed degenerative lumbar disc disease and left sciatica. He concluded that appellant's condition was causally related to her employment injury but indicated that she had no permanent impairment and could perform light-duty work eight hours a day. In an October 11, 1993 report, Dr. Buckley stated that, other than appellant's obesity and minor degenerative changes in the lower back, there was no medical rationale for appellant's disability. He indicated that he could not state, to any reasonable medical probability, that appellant's current condition was causally related to the September 7, 1984 employment injury.

¹ Docket No. 96-1514 (issued July 22, 1998); Docket No. 86-2189 (issued as *Joyce C. Lewis*, December 4, 1986). The history of the case is contained in the prior decisions and is incorporated by reference.

In a September 18, 1998 letter, appellant, through his attorney, requested reconsideration. Appellant submitted a May 10, 1996 report from Dr. Buckley, not previously reviewed, in which he stated:

“[I]t is unquestionable and to a reasonable medical probability that this patient’s chronic back condition is related to her on-the-job injury of September 7, 1984. She had no prior history of back problems, suffered a significant injury, and was found to have a bulging disc at L5-S1. The problem comes in relating each and every separate incident of back problems to the September 7, 1984 incident because of the fact that many times she has had flare-ups of her back because of some work activity at home or other activities. Nevertheless, this patient continues to have a centrally bulging L5-S1 disc which has degenerated over the years, and she has chronic back pain, and I relate this condition to the original injury of September 7, 1984. I also relate this patient’s inability to perform working activities other than light working activities to her original back injury. Her working restrictions are unchanged from my previous description of her work restrictions of January 12, 1993.”

In a January 11, 1999 merit decision, the Office denied appellant’s request for modification of the prior decisions.

The Board finds that appellant has not established that she had any disability after January 11, 1992 causally related to her September 7, 1984 employment injury.

Once the Office properly terminates an employee’s compensation, the employee has the burden of establishing that any disability after the termination is causally related to the original employment injury.² Appellant has not met that burden in this case. Dr. Buckley related appellant’s current back condition to the employment injury which occurred 15 years previously. His only rationale for doing so, however, was that appellant had no back problems prior to the employment injury. The Board has held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury is insufficient, without supporting rationale, to support a causal relationship.³ Dr. Buckley gave no explanation on how an employment injury, which occurred 15 years previously, would cause any current disability. Furthermore, he did not explain why his opinion had changed from his October 11, 1993 report when he opined that he could not definitively state that appellant’s current condition was causally related to the employment injury. In his October 11, 1993 report, Dr. Buckley stated that appellant’s obesity and minor degenerative changes presented the only objective medical rationale for her disability. Dr. Buckley did not discuss whether these conditions were related to the September 7, 1984 employment injury. He also indicated that appellant’s work restrictions had not changed since his January 12, 1993 report. At that time, Dr. Buckley indicated that appellant could perform light-duty work eight hours a day. He has not discussed how the effects of the employment injury would keep appellant from performing her regular duty

² *Joseph M. Campbell*, 34 ECAB 1389 (1983).

³ *Kimper Lee*, 45 ECAB 565 (1994).

15 years later. Dr. Buckley's May 10, 1996 report, therefore, has not established that appellant had any disability after January 11, 1992 causally related to her September 7, 1984 employment injury.

The decision of the Office of Workers' Compensation Programs dated January 11, 1999 is hereby affirmed.

Dated, Washington, DC
October 3, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Valerie D. Evans-Harrell
Alternate Member